

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRIETTA FRIZZLE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Birmingham, AL

*Docket No. 00-2423; Submitted on the Record;
Issued June 4, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

The Board has duly reviewed the case record and finds that the Office properly denied appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

On October 21, 1996 appellant, then a 47-year-old housekeeper, filed a traumatic injury claim alleging that on October 9, 1996 she injured her arm and back while lifting dirty linen or trash.

By letter dated July 10, 1998, the Office accepted appellant's claim for a sprained shoulder and arm.

On August 3, 1998 appellant filed a recurrence of disability claim alleging that she experienced continual pain since the date of her 1996 injury.

By decision dated April 4, 1999, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her October 9, 1996 employment injury. In a May 20, 1999 letter, appellant requested reconsideration.

In a June 2, 1999 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that it neither raised substantive legal questions nor included new and relevant evidence. In an August 16, 1999 letter, appellant, through her representative, requested an oral hearing.

By decision dated June 20, 2000, the Office denied appellant's request for a hearing under section 8124(b)(1) of the Federal Employees' Compensation Act¹ on the grounds that she had previously requested reconsideration.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."² The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.³ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,⁴ when the request is made after the 30-day period for requesting a hearing,⁵ and when the request is for a second hearing on the same issue.⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁷

In this case, appellant's August 16, 1999 hearing request was made after she had requested reconsideration on May 20, 1999 of the Office's April 4, 1999 decision. Thus, appellant was not entitled to a hearing as a matter of right because she made her hearing request after she had requested reconsideration.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its June 20, 2000 decision, stated that it had considered her request and determined that appellant could pursue her claim further by requesting reconsideration and submitting evidence not previously considered establishing that the claimed recurrence was causally related to the accepted injury. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁸ In this

¹ 5 U.S.C. §§ 8101-8193.

² *John T. Horrigan*, 47 ECAB 166 (1995).

³ *Philip G. Feland*, 47 ECAB 418 (1996).

⁴ *Frederick D. Richardson*, 45 ECAB 454 (1994).

⁵ *Id.*

⁶ *Id.*

⁷ *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

⁸ *Frederick D. Richardson*, *supra* note 4; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request, which could be found to be an abuse of discretion.

For these reasons, the Office, therefore, acted within its discretion in denying appellant's request for a hearing under section 8124(b)(1) of the Act.

The June 20, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 4, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member